

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tawana Ross	:	
	:	
v.	:	C-2022-3032745
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint of Tawana Ross filed against Philadelphia Gas Works because Ms. Ross failed to establish by a preponderance of the evidence that she is eligible for a second Commission-issued payment arrangement or an extension of her prior one.

PROCEDURAL HISTORY

On June 1, 2022, Tawana Ross (the Complainant or Ms. Ross) filed a Formal Complaint with the Pennsylvania Public Utility Commission (the Commission or PUC) against Philadelphia Gas Works (the Respondent or PGW) in which she requested a new payment arrangement (PAR).

On August 3, 2022, PGW filed a timely answer in which it averred that the Complainant was not entitled to a new PAR because she has defaulted on multiple PGW-issued

PARs, one Commission-issued PAR, and also because she has a poor payment history. Respondent requested that the Complainant be denied relief and the Complaint be dismissed.

On August 9, 2022, the Commission issued a hearing notice setting an initial telephonic hearing for September 21, 2022, at 10:00 a.m. and the case was assigned to me. On August 15, 2022, a prehearing order was issued advising the parties of the applicable hearing procedures.

The hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf and did not offer any exhibits. Attorney Graciela Christlieb appeared on behalf of PGW. PGW presented the testimony of one witness and offered three exhibits which were admitted into the record. The hearing resulted in a transcript of 43 pages. The record was closed upon receipt of the transcript on October 6, 2022.

FINDINGS OF FACT

1. The Complainant is Tawana Ross, who resides at 5943 Malta Street, Philadelphia, PA (service address).
2. The Respondent is Philadelphia Gas Works, which provides gas service to the Complainant at the service address.
3. On March 27, 2019, Ms. Ross filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3684483, seeking a Commission-issued PAR. Tr. 25. Exhibit 3.
4. At BCS Case No. 3684483, Ms. Ross reported gross monthly household income of \$2,426.67 and a household size of one adult and one child. Exhibit 3.
5. By determination issued March 27, 2019, at BCS Case No. 3684483, BCS granted a level 2 Commission-issued PAR on a balance of \$2,644.71. Exhibit 3.

6. The March 27, 2019, Commission-issued -PAR directed Ms. Ross to pay her monthly budget bill of \$247.00 plus an additional \$74.00 towards her arrearage, for a total of \$321.00 beginning with the due date of her May 2019 bill. Exhibit 3

7. From June 1, 2019, through September 21, 2022, the Complainant repeatedly failed to pay her bills for electric service in full and on time. Tr. 13, 22 – 23. Exhibit 2.

8. The Complainant defaulted on the Commission-issued PAR awarded in BCS Case No. 3684483. Tr. 26. Exhibit 1, 2.

9. On April 1, 2022, the Complainant filed an Informal Complaint at BCS Case No.3826489, seeking a new Commission-issued PAR. Exhibit 3.

10. By decision dated May 2, 2022, BCS dismissed the Informal Complaint due to a prior unsatisfied Commission-issued -PAR. Tr. 27. Exhibit 3.

11. The Complainant filed a Formal Complaint challenging the BCS determination on June 1, 2022.

12. As of the date of the hearing, the balance on the Complainant's account was \$2,895.90. Tr. 22. Exhibit 1.

13. The Complainant is employed at the Foot and Ankle Specialty Center where she works 37 hours per week and earns \$22.00 per hour. Tr. 17 – 18.

14. The Complainant earns \$814 per week (gross) or approximately \$3,527.33 (gross) per month.

15. The Complainant lives at the service address with her 15-year-old son. Tr. 17.

16. Since March 28, 2019, when the Commission-issued-PAR was awarded in BCS #3684483, there has been no change in the Complainant’s household size and the Complainant’s income has increased. Tr. 17, 25, 32 – 33. Exhibit 3.

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.¹ A person seeking affirmative relief from the Commission has the burden of proof.²

In this matter, the Complainant is the party seeking affirmative relief from the Commission; therefore, she has the burden of proof. This means that she must establish by a preponderance of the evidence that she is eligible for a Commission-issued payment arrangement under Chapter 14 of the Public Utility Code.³

The Responsible Utility Customer Protection Act (Act)⁴ applies to complainants alleging inability to pay and requesting a Commission-issued PAR.⁵ However, a complainant who claims an inability to pay their utility bills is not entitled as a matter of right to receive a Commission-issued payment arrangement.⁶ It is entirely within the discretion of the Commission to determine on a case by case basis whether both parties, the customer and the

¹ 66 Pa.C.S. § 701.

² 66 Pa.C.S. § 332(a).

³ *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

⁴ 66 Pa.C.S. §§ 1401-1419.

⁵ *See*, 66 Pa.C.S. § 1405(a), which provides that, “[t]he commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers.”

⁶ *E.g., DeGannaro v. Pa. Elec. Co.*, Docket No. C-2012-2300818 (Final Order Nov. 8, 2012).

utility company, will benefit from the issuance of a payment arrangement.⁷ While the Commission has the authority to establish a payment arrangement, the Commission exercises this authority very judiciously. More specifically, the Commission exercises its discretion only on behalf of customers, “who have demonstrated some evidence of good faith efforts to pay their utility bills or who have experienced a significant change of circumstance outside of their control.”⁸

Moreover, the Act provides strict guidelines that the Commission must follow, including the provision that generally permits the Commission to grant only one PAR with limited exceptions. Specifically, this provision of the Act provides, in relevant part:

(d) Number of payment arrangements.—*Absent a change in income*, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision.

66 Pa.C.S. § 1405(d) (emphasis added).

The Complainant failed to comply with the terms of the March 2, 2019, BCS determination at Case No. 3684483 which directed a payment arrangement on her account with Respondent.⁹ Because Ms. Ross did not appeal the BCS decision and failed to make the payments ordered by the BCS decision, she has defaulted on the Commission-issued -PAR. As the Commission has explained, when a BCS decision is not timely appealed, “then the BCS

⁷ *Id.*: see also, *Creekmur v. PECO Energy Co.*, Docket No. C-2008-2079322 (Final Order entered Feb. 4, 2010).

⁸ *Stormer v. Pa. Am. Water Co.*, Docket No. C-2011-2249169 (Final Order entered Mar. 28, 2012); *See also Crawford v. Nat’l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007); *Maye v. Nat’l Fuel Gas Distrib. Corp.*, Docket No. F-02140445 (Opinion and Order entered Oct. 22, 2008); *Sayre v. UGI Utils., Inc.*, Docket No. F-02292619 (Opinion and Order entered Nov. 4, 2008); *Thomas v. Nat’l Fuel Gas Distrib. Corp.*, Docket No. F-02144645 (Opinion and Order entered Dec. 9, 2008).

⁹ Exhibit 3.

payment arrangement becomes final, and the complainant must prove a change in income to be awarded a different payment arrangement before the BCS[-]PAR is paid off.”¹⁰

Therefore, pursuant to 66 Pa.C.S. § 1405(d), Ms. Ross is only eligible for another Commission-issued PAR if she has experienced a change in income.

The Act defines a “change in income” as follows:

“Change in income.” A *decrease* in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a *decrease* in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

66 Pa.C.S. § 1403 (emphasis added).

Additionally, “household income” is defined as, “[t]he combined gross income of all adults in a residential household who benefit from the public utility service.”¹¹

Ms. Ross testified about her household size and income. Ms. Ross’ current household size totals two individuals, consisting of herself and her son. Ms. Ross’ current gross monthly household income is \$3,527.33, which is an increase from her prior household income level of \$2,426.67.¹²

Pursuant to 66 Pa.C.S. § 1403, Ms. Ross is only eligible for a second Commission-issued PAR if she has experienced a decrease in household income. Ms. Ross’ gross monthly income at the time of the BCS decision dated March 27, 2019, at Case No. 3684483, was \$2,426.67. Given her current income of \$3,527.33, she has experienced an

¹⁰ See *Horinka v. Pa. Power Co.*, Docket No. C-2017-2582842, p. 3 (Opinion and Order entered Aug. 4, 2017).

¹¹ 66 Pa.C.S. § 1403.

¹² Thirty-seven hours per week at \$22.00 per hour = \$814 per week, or \$42,328 per year or \$3,527.33 per month.

increase in income, not a decrease. Therefore, because Complainant has not suffered a decrease in her household income, she is not eligible for a second Commission-issued PAR.

While the Complainant is not eligible for a second Commission-issued PAR, a provision of the Act provides that the Commission may reinstate and extend a previously ordered payment arrangement in limited circumstances where the customer has defaulted on that payment arrangement. Specially, section 1405(e) provides:

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement . . . as a result of a *significant change in circumstance*, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months.

66 Pa.C.S. § 1405(e) (emphasis added). Further, “significant change in circumstance” is defined as the following:

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

Ms. Ross’ current gross monthly household income of \$3,527.33 for a household of two is less than 300% of the Federal poverty level.¹³ Thus, Ms. Ross is eligible for

¹³ See *Federal Register*, Vol. 87, No. 14, pp. 3316 (January 21, 2022). Also available at <http://aspe.hhs.gov/poverty> (providing that a gross monthly income of less than \$4,578.00 for a household of two is below 300% of the Federal povert

reinstatement and extension of her March 27, 2019, Commission-issued PAR at BCS No. 3684483 if she defaulted on said arrangement as a result of at least one of the four prongs that define “significant change in circumstance” above. The record is void of evidence that Complainant defaulted on her Commission-issued -PAR as the result of the onset of a chronic or acute illness, catastrophic damage to her residence, or loss of residence. Further, there was no increase in Complainant’s number of dependents in the household. In sum, none of the four prongs are applicable.

Complainant failed to honor the terms of the March 27, 2019, Commission-issued PAR at BCS No. 3684483 and thus has defaulted on it. Therefore, the Commission may not reinstate the payment arrangement ordered March 27, 2019.

Consequently, I conclude that the Complainant has failed to establish by a preponderance of the evidence that she is eligible for a second Commission-issued PAR or an extension of the prior Commission-issued PAR. Accordingly, I must deny her Complaint in its entirety.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject-matter of this dispute. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding.

5. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

6. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer or applicant has defaulted on a previous payment arrangement established by a commission order or decision. 66 Pa.C.S. § 1405(d).

7. A "change in income" is defined as: "A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level." 66 Pa.C.S. § 1403.

8. Complainant has failed to carry her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement. 66 Pa.C.S. § 1405(d).

9. If the customer defaults on a payment arrangement as a result of a significant change in circumstance, the Commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. 66 Pa.C.S. § 1405(e).

10. Complainant has failed to carry her burden of proving that she experienced a significant change in circumstance as defined by 66 Pa.C.S. § 1403.

11. Complainant has failed to carry her burden of proving that she is eligible for a reinstatement of the Commission-issued payment arrangement at BCS No. 3544235. 66 Pa.C.S. § 1405(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Tawana Ross in Tawana Ross v. Philadelphia Gas Works at docket C-2022-3032745 is dismissed; and
2. That the Secretary shall mark this docket closed.

Date: December 21, 2022

/s/
Arlene Ashton
Administrative Law Judge